

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL TYBERG,

Plaintiff,

-against-

Case No.: 07 CV 2262

ALBERT EINSTEIN COLLEGE OF MEDICINE OF  
YESHIVA UNIVERSITY, ALBERT EINSTEIN  
COLLEGE OF MEDICINE OF YESHIVA UNIVERSITY  
COMMITTEE ON STUDENT PROMOTIONS AND  
PROFESSIONAL STANDARDS, JAMES DAVID, M.D.,  
and ALLEN M. SPIEGEL, M.D.,

Defendants.

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STATE OF NEW YORK     )  
                                  .SS:  
COUNTY OF BRONX     )

Nadine T. Katz, M.D., being sworn, states:

1. I am the Associate Dean for Students at defendant Albert Einstein College of Medicine of Yeshiva University ("AECOM") and served as the Co-Chairperson of AECOM's Committee on Student Promotions and Professional Standards (the "Committee") between May 2004 and July 2006. I submit this affidavit in support of Defendants' motion for summary judgment.

2. I am familiar with the academic proceedings that led to plaintiff Michael Tyberg's ("Plaintiff's") withdrawal from AECOM because of my role as Co-Chairperson of the Committee that conducted those proceedings. The documents attached hereto are true copies of either AECOM's business records and/or documents submitted by Plaintiff to the Committee.

3. Exhibit "A", annexed hereto, is a copy of the relevant provisions of the AECOM By-Laws, which provisions, among other things, govern the actions of the Committee (Section III),

establish academic standards for medical students (Section IV), and provide for the accommodation of disabilities in conformance with the Americans with Disabilities Act (Section VII). These By-Laws are made available to all AECOM students and are available online at <http://www.aecom.yu.edu/ooe/students/>.

4. Exhibit "B", annexed hereto, is a copy of the academic schematic of Plaintiff, which documents Plaintiff's ten exam failures and upon which the Committee relied in determining that Plaintiff's repeated exam failures warranted dismissal.

5. Exhibit "C", annexed hereto, is a copy of the August 7, 2003 letter from Associate Dean for Students, Dr. James David, to Plaintiff, documenting Plaintiff's decelerated schedule and a copy of Plaintiff's "Student Information Summary" confirming such deceleration.

6. Exhibit "D", annexed hereto, is a copy of the letters from Dr. David to Plaintiff, dated December 16, 2003 and March 31, 2004, documenting further deceleration per Plaintiff's requests to drop additional courses.

7. Exhibit "E", annexed hereto, is a copy of the agenda and minutes of the Committee's May 17, 2004 meeting, at which meeting the Committee determined that Plaintiff's repeated exam failures warranted dismissal.

8. Exhibit "F", annexed hereto, is a copy of the statement submitted by Plaintiff at the May 17, 2004 Committee meeting offering explanations for his repeated failures.

9. Exhibit "G", annexed hereto, is a copy of the May 27, 2004 letter from Dr. David to Plaintiff documenting the Committee's May 17, 2004 decision to dismiss Plaintiff.

10. Exhibit "H", annexed hereto, is a copy of the agenda and minutes of the Committee's July 19, 2004 meeting, at which meeting Plaintiff appealed the Committee's determination to dismiss him.

11. Exhibit "I", annexed hereto, is a copy of Plaintiff's second statement to the Committee, submitted at the July 19, 2004 meeting offering further explanations for his repeated failures.

12. Exhibit "J", annexed hereto, is a copy of the letters from Dr. David to Plaintiff, dated August 13 and August 23, 2004, informing Plaintiff of the Committee's conditional rescission of its May 17, 2004 dismissal and notifying him that any future exam failure would be grounds for dismissal.

13. Exhibit "K", annexed hereto, is a copy of the United States Medical Licensing Examination ("USMLE") Step 1 Score Report for Plaintiff, dated October 5, 2005, which documents his failure of the September 8, 2005 Step 1 exam.

14. Exhibit "L", annexed hereto, is a copy of the agenda and minutes of the Committee's December 19, 2005 and January 23, 2006 meetings, at which meetings the Committee determined that Plaintiff's repeated exam failures warranted dismissal.

15. Exhibit "M", annexed hereto, is a copy of Plaintiff's third statement to the Committee, submitted at the December 19, 2005 meeting offering still further explanations for his repeated failures.

16. Exhibit "N", annexed hereto, is a copy of the January 25, 2006 letter from Dr. David to Plaintiff, documenting the Committee's January 23, 2006 decision to dismiss Plaintiff.

17. Exhibit "O", annexed hereto, is a copy of the agenda and minutes of the Committee's March 27, 2006 meeting, at which meeting the Committee denied Plaintiff's appeal and upheld his dismissal.

18. Exhibit "P", annexed hereto, is a copy of Plaintiff's fourth statement to the Committee, submitted at the March 27, 2006 meeting offering even more explanations for his repeated failures.

19. Exhibit "Q", annexed hereto, is a copy of the February 28, 2006 letter from psychiatrist Dr. Shalom Feinberg, submitted by Plaintiff to the Committee at its March 27, 2006 meeting.

20. Exhibit "R", annexed hereto, is a copy of the March 27, 2006 letter from Dr. David to Plaintiff, documenting the Committee's March 27, 2006 denial of Plaintiff's appeal.

21. Exhibit "S", annexed hereto, is a copy of Plaintiff's June 30, 2006 letter to Dean Spiegel appealing the Committee's decision to dismiss him from AECOM.

22. Exhibit "T", annexed hereto, is a copy of the July 12, 2006 letter from Dean Spiegel denying Plaintiff's appeal and upholding the Committee's dismissal of Plaintiff.

WHEREFORE, on the basis of Plaintiff's failure to identify any triable issues of fact during the now expired period for discovery, it is respectfully urged that the Court grant Defendants' motion for summary judgment.

  
NADINE T. KATZ

Sworn to and subscribed before me  
this 31 day of March 2008.

  
NOTARY PUBLIC

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JOHN A. SCARFONE  
Notary Public, State of New York  
No. 02SC4976077  
Qualified in Nassau County  
Commission Expires Jan. 14, 2011